IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO.32 OF 2006
WITH
CIVIL APPLICATION NO.29 OF 2006

Mrs.Shital Anand Patharia. ..Applicant.

V/s.

Mr.Anand Tarachand Patharia. ..Respondent.

WITH

MISC.CIVIL APPLICATION NO.26 OF 2006

Mr.Anand Tarachand Patharia. ..Applicant.

V/s.

Mrs.Shital Anand Patharia. ..Respondent.

Mr.Pratap P.Bhosale for applicant in MCA No.32/06 and respondent in MCA No.26/06.

Mr.P.M.Mokashi with Smt.S.P.Mokashi for respondent In MCA No.32/06 and for applicant in MCA No.26/06.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 27, 2006.

P.C. :

1. Heard counsel for the parties. Both these petitions can be disposed of by common order. This is so because, the cross-petitions are filed for transfer of respective cases pending against them in different courts. The first matrimonial dispute came to be filed by the husband before the Civil Judge, Senior Division, Kalyan, being Marriage Petition

No.278 of 2005 for divorce. Subsequently, wife has filed petition before the 3rd Family Court, Bandra, Mumbai being Petition No.A-2140 of 2005 praying for restitution of conjugal rights. The wife has filed MCA No.32 of 2006 for transfer of the case filed by the husband before the C.J.S.D.,Kalyan to 3rd Family Court, Bandra, Mumbai, so that the same can be heard and decided alongwith the petition filed by the wife before that court. On the other hand the husband has filed MCA No.26 of 2006 for transfer of petition filed by the wife, which was in subsequent point of time to the Court of C.J.S.D., Kalyan to be heard with the Marriage Petition filed by him before that court.

2. In so far as the wife is concerned, it is submitted that she is unemployed. She is entirely dependent on her parents and is presently staying alongwith her parents at Churni Road, Mumbai. It is stated that she will not be in position to periodically visit Kalyan Court to attend the proceedings. On the other hand, the case of the husband is that the appropriate course is to transfer the proceedings instituted by the wife to the court at Kalyan, where he has already filed Marriage Petition, which is earlier point of time.

3. Having considered the rival submission, in my opinion, the appropriate course in the interest of justice is to hear both the petitions before one court, so as to avoid inconsistent findings on issues that may arise for consideration in the respective petitions which are overlapping. Besides, as the wife is unemployed and she is staying at Churny Road, which almost about 60 Kms. away from Kalyan, the wife has to undertake the journey to attend the said court proceedings, all these can be avoided by transferring the proceedings filed by the husband in the court of C.J.S.D.,Kalyan being Marriage Petition No.278 of 2005 to the 3rd Family court, Bandra, Mumbai where the petition filed by wife being Petition No.A-2140 of 2005 is already pending for hearing. Both the petitions can be heard and decided together by the same Judge. For the convenience of the husband, the trial court can be directed to ensure that once the hearing of the petition commences, the same should proceed on day to day basis, so that both the petitions can be concluded together making it convenient to the parties to produce their respective witnesses during such hearing.

4. Accordingly, the application preferred by the wife is allowed in terms of prayer clause (a) and (b) and on the other hand the application filed by the husband is rejected with the above observations. No order as to costs.

5. Civil application also disposed of accordingly.